IN THE

Supreme Court of the United States

October Term, 1971

NO. 71-912

UNITED STATES OF AMERICA, *Respondent*

v.

RAY F. WILSON, *Petitioner*

PETITION FOR A WRIT OF CERTIORARI
To The United States Court of Appeals
For The Fifth Circuit

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IN THE

Supreme Court of the United States

October Term, 1971

NO. _____

UNITED STATES OF AMERICA, *Respondent*

v.

RAY F. WILSON, *Petitioner*

PETITION FOR A WRIT OF CERTIORARI
To The United States Court of Appeals
For The Fifth Circuit

Petitioner, Ray F. Wilson, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on March 30, 1971 and November 29, 1971.

Citations To Opinions Below

The memorandum opinion of the United States District Court for the Southern District of Texas is unreported. The Opinions of the Court of Appeals, Fifth Circuit are reported in 440 F.2d 1103 (C.A. 5, 1971) and

__F.2d__ (C.A. 5, 1972) and copies appear in the appendix, pp. 18 and 22).

Jurisdiction

The judgments of the Court of Appeals were entered on March 30, 1971 (Appendix, p. 25) and November 29, 1971 (Appendix, p. 19) and December 16, 1971 (Appendix, p. 17). The jurisdiction of this court is invoked under 28 U.S.C. Section 1224 (1).

Questions Presented

1. Whether Federal due process is essentially equivalent to State due process, and, if so, how can the Federal Trial Court avoid being bound by the limitations and truth of its oral pronouncements in open court.

2. Whether petitioner has as a matter of right the right to appellate review of his case without undue restraint.

3. Whether enhancement of penalty based on sex violates petitioner's due process rights.

4. Whether petitioner has a right to a jury fairly selected.

5. Whether an improperly selected jury coupled with a verdict not supported by evidence denies petitioner a substantial constitutional right.

6. Whether petitioners had a right to a Miranda Warning under the peculiar circumstances where said investigation was ab initio criminal, was carried out by criminal investigators, and in the light of the fact that petitioner asked the special agents whether or not he should employ counsel.

7. Whether the U. S. Court of Appeals, Fifth Circuit, was correct in dismissing the appeal as to Ray F. Wilson, and if so, did such dismissal deny petitioner, Ray F. Wilson the right to have his case decided based on the applicable law and the peculiar facts that gave rise to said case.

8. Whether petitioner was denied a substantial right to a jury trial when the Government was allowed on appeal to use untimely extra record evidence in procuring an affirmation of the trial Court's judgment.

9. Whether petitioner was subject to substantial restraint when the Government's special agents place petitioners in the absence of any warning in a darkened, essential enclosed room in the Federal Building at 515 Rusk Avenue, Houston, Texas, and interrogated and cross-examined petitioners under essentially jail house like conditions.

10. Whether equal protection and due process under the Fourteenth and Fifth Amendments of the Federal Constitution may be denied a taxpayer for no reason other than that this residence is outside rather than within a certain judicial district.

11. Whether the Government has a right to refuse to reveal the identity of an informant where probable cause for initiating said criminal investigation depends upon such identity, where the Government fails to assert any privilege, and where the Special Agents give conflicting testimony concerning the informant.

12. Whether after jeopardy attaches the Government may use the Judicial Process as an instrumentality to accomplish a double indictment and double prosecution on

the same and expanded Counts arising out of the same facts.

13. Whether under the instant facts of this case petitioner, Ray F. Wilson, has a right to represent himself as a sole Pro Se Attorney, and, if so, did the trial court commit error by forcing said petitioner to employ counsel for the benefit of the Government, notwithstanding the fact that petitioner acted in good faith and with rare ability.

14. Whether the Government's continued delay gives the taxpayers protection under "IRS New Release No. 897, October 3, 1971", reprinted in 7 CCH 1967 Stand. Fed. Tax Rep. Section 6832 and a further right to permanent dismissal of said case.

Statutes Involved

The statutory provisions involved are 28 U.S.C. Section 1654; Federal Rule of Criminal Procedure, Rule 32, 28 U.S.C. Section 1224(1).

Statement

Petitioners, Ray F. Wilson and wife, Ruby J. Wilson were indicted jointly, prosecuted and convicted for income tax evasion and not reporting income allegedly received for the taxable years 1962, 1963, and 1964, in violation of Sections 7201 and 7206(1) of Title 26 of the United States IR Code. Prior to this six count indictment, Petitioner Ray F. Wilson was indicted on three identical counts for income tax evasion and Petitioner was prosecuted simultaneously in two separate suits at the same time until the two suits were merged, notwithstanding, the fact that said petitioner had pleaded not guilty in both suits. On taxpayer's motion for the suppression of evi-

dence obtained from him by Special Internal Revenue Agents and such other evidence a derivative thereof in violation of defendants constitutional rights, the trial court denied suppression in the absence of a single government agent taking the stand to testify.

During the years of 1965 and 1966, on seven separate occasions petitioners were questioned by one or more of the Special Agents concerning petitioners tax liability. Although the investigation was criminal from its inception and coupled with the fact that petitioners inquired of its nature and the need for employing an attorney, the criminal and the Special Agents concealed the true nature and purpose of the investigation until the investigation was essentially completed and it was too late for petitioners to employ the assistance of effective counsel to protect their constitutional rights.

The facts of the case indicate that petitioner and his wife were requested to come to the Internal Revenue Office in the federal building at Houston, Texas, for the purpose of closing out the case according to the petitioners' understanding, a group of Special Agents placed petitioners in an essentially enclosed dreary space and carried out a long and detailed interrogation and cross examination of petitioners. The uncontradicted facts of the case show that Special Agent Pickett criticized Special Agent Crocker for misleading petitioners and concealing (Transcript pp. 170, 183, 184, 185, 256, 261, 262, 768, 769, 776, 781, 782 and 784) the nature and originality of the investigation.

Petitioner, Ray F. Wilson, in an attempt to get a speedy trial of his case represented himself as Pro Se Attorney in said case. The government through delay and pressure

obtained an oral order from the court that petitioner could not represent himself since he was not a licensed attorney. After being forced to employ counsel, petitioner, Ray F. Wilson employed attorney Roberson L. King. Meanwhile, the government procured a joint indictment against petitioner and his wife based on the same cause of action.

Upon requesting a jury trial, the jurors were qualified and excluded based upon the grade level obtained in school coupled with the condition that casual inquiries had been made upon them by the Internal Revenue Service (Transcript pp. 325-363). This selection and qualification process inherently and systematically excluded all black jurors from the panel to the extent that the trial court judge had to add an additional juror to the reduced panel in obtaining a jury of twelve. The trial judge specifically selected Mrs. David Dewitt (white), Transcript, pp. 357 and 362 who falls in the same classification of persons who had been excluded from the panel.

After being convicted in a jury trial, petitioners gave proper notice of appeal of their case, which included notice and acceptance in open court followed by proper written notice. Petitioner, Ray F. Wilson, submitted his Pro Se motion to file a Pro Se motion in said case which was granted. Meanwhile after many months had passed and the time for filing appellee's motion to the Fifth Circuit had presumably passed, the government procured a "Memorandum and Order" in which finding of facts were presumably made ex parte and outside the record. Moreover, the government extended the record of the case by filing a late brief which included said findings of fact. The Fifth Circuit Court of Appeals after considering the gov-

ernment's motion for dismissal and the aforementioned finding of fact held that Ray F. Wilson had not received the final judgment entitling him to appellate review. The trial court's judgment as to Ruby Wilson was affirmed and the appeal of Ray F. Wilson was dismissed and remanded back to the District Court for resentencing on all six counts.

The facts of the case show clearly that the government action had been unavoidably conflicting in that the government has demanded the validity of petitioner, Ray F. Wilson, judgment for collection while at the same time asserting an invalidity for appeal purposes.

Petitioner Ray F. Wilson's case was remanded to the trial court in which petitioner's punishment on count one was enhanced by giving said petitioner a five year probated sentence, Resentencing Transcript p. 8, notwithstanding the fact that petitioners' conduct prior to and subsequent to said tax case has been satisfactory and the trial court judge has pronounced from the bench, transcript pp. 1008 and 1009 that: "There will be no probationary sentence or custodial period."

Reasons For Granting The Writ

1. The increased severity of penalty accruing to petitioner derivative of conflicting multiple judgments through no fault of petitioner is a violation of substantial Fifth and Eighth Amendment rights, which forbid cruel and unusual punishment. Where the court increased petitioner's penalty for no reason other than that the Court in and of itself made a mistake equivalent to a typographical error such is unusual and unprecedented punishment as reflected from the history of our legal system. The

question that follows is whether one can easily argue that the Court's enhancement of petitioner's penalty in contradiction to the Court's solemn proclamation, and after petitioner had acted in reasonable reliance upon such proclamation is not cruel punishment. The composite and uncontradicted record shows clearly that petitioner was subjected to cruel and unusual punishment.

There is little doubt that due process under the Fourteenth Amendment would prevent a state District Court from enhancing the penalty proclaimed in the oral judgment of the Court. In petitioner's case the Federal District Court after the Government voluntarily acknowledged that petitioner's conduct had not been adverse since his first judgment (Resentencing Transcript, p. 8) notwithstanding, increased petitioner's punishment. The substantial and underlying question which appears not to have been previously answered by this court—is why should Federal due process under the Fifth Amendment be substantially less and markedly different to State due process under the Fourteenth Amendment.

The actual record of the tax case through the sentencing process that occurred on May 22, 1970, makes no affirmative mentioning of the sentencing process not being complete; nevertheless, the record, Transcript pp. 1008 and 1009, clearly states that the total penalty shall be $33,000 and that there would not be any custodial period or probationary sentence. Yet the index to the record (which is not an actual part of the record developed on the trial level), Transcript, p. 3, states that no sentence was imposed on counts 4, 5, and 6. Thus the conformity of the trial court's belated written judgment sentence with the index of the case and not with the prior record of the

case coupled with the long delay between the oral and written pronouncement of sentence give rise to a presumption that the court produced the judgment sentence from the index of the case rather than the record. This presumption presents the unavoidable question, whether a defendant who defends himself in good faith should through no fault of his own have to suffer a detriment accrued through delay and execution. If the Appellant is forced to suffer such loss, then, the often repeated constitutional phrases, such as; due process, speedy trial, confrontation, cruel and unusual punishment, public trial, equal protection, deprivation of rights and property could mean but little to the Appellant. Notice and oral pronouncement in open court as to total judgment penalty and conditions coupled with a joint and solemn sequential sentencing of two co-defendants in the same case at the same time gives rise to a presumption of final judgment sentences as to both co-defendants. The absence of any timely objections as to the finality of the judgments by the Government prior to proper notice of appeal by appellant coupled with the Government's demand (letter, appendices) for payment and, receipt of part payment under the question judgments should preclude the Government from asserting any claim of invalidity of one of the judgments for Appellate purposes. Even if the Government had made a timely objection as to the finality of the judgment and even in the absence of demand and receipt of part payment under the judgment sentence, the Government should not be allowed to use any creation other than the affirmative record to defeat a judgment sentence resulting from the sentencing process. There exist no affirmative record showing that Appellant Ray F. Wilson's judgment sentence was not a final judgment.

A novel and subsequent point though not a part of the record and hence not binding upon the Federal Court, is probably, worthy of 'judicial notice' in that a state domestic relations judge, Harris County, Texas, Case No. 848, 878, Volume 814 pages 47 and 55 of the deed records, has held petitioner's financial liability in said tax case based upon the Government's testimony as intervenor in the divorce case that no reason could be given for the Federal Court giving petitioner a greater penalty than his ex-wife other than that he was head of the household.

2. Where the accused has been tried involuntarily and is convicted in a Federal Court, such accused has as a matter of right the right to appeal his case to the U. S. Courts of Appeals for his designated district (F.R.A.P. Rule 3, U.S.C.A.). Prior to the perfection of the first appeal, the Government wanted no more than full payment of a fine. After proper notice and appeal, the Government demanded payment of the fine and dismissal of petitioner's appeal. Without reason and subsequent to petitioner electing in his option to appeal, petitioner's penalty was enhanced. The enhancement of petitioner's penalty based on his election to appeal his case inherently dilutes and restrains petitioner's right to appeal. Although this court has disaffirmed a State Court's right to enhance punishment without indentificable cause, *North Carolina v. Pearce*, 395 U.S. 711; this important question of a Federal Court's authority to enhance petitioner's previously designated liability appears not to have been previously answered by this court.

3. Where state action arbitrarily discriminates or penalizes a petitioner based on sex and where no reasonable purpose is affirmatively shown such is a violation of equal

rights and protections under the Federal Constitution *Reed v. Reed,* ____U.S.____, 92 S.Ct. 251 (1971). There is no reasonable purpose shown in the verdict or record for making petitioner's penalty substantially greater than that given to his ex-wife, except for the fact that the two are of opposite sex and that the case was tried in a Federal Court rather than a State Court.

There is no constitutional bases for making petitioner's sex, color, residence, or the Court system in which he stands as the determinants of his justice or penalty.

4. That petitioners were denied due process as to a fair trial in violation of their amendment 5 rights under the U. S. constitution when the trial judge used grade level obtained in school coupled with 'casual inquiries' having been made upon jurors as a means of excluding jurors from the panel. The qualification process used by the trial judge inherently and systematically excluded all black jurors on these grounds; yet, a white juror (Mr. Abraham) who was an accountant was not excluded because of his specialized education. Moreover, the trial judge placed a previously excluded prospective juror (white) on the panel who fell in the 'casual inquiry' classification. Though petitioners have no right not to have an all white jury, they do have a right to a jury fairly selected.

5. The record in the case is void of any affirmative proof of evidence supporting the jury verdict in the case. The correspondence between income tax reported and the income tax calculated based on supported evidence for the years 1962, 1963 and 1964 is reflected in the following tabulations:

Year	Income Tax Reported	Income Tax Calculated
1962 (1)	$ 942.60	$1,120.21
1963 (2)	1,727.83	1,656.19
1964 (3)	1,819.16	1,354.79

*(1), (2) and (3) were taken from the reported record of this case.

Thus one can reasonably assume that the Government procured a verdict which was inconsistent with evidence in the case by appealing to the passion of the jurors who had not been fairly selected. Appellant submits that the Government used evidence without probative or material force coupled with material possessions owned by appellant to prove willfulness.

6. There is a conflict between the decision of the court below in the instant case and the 7th and 10th Circuit cases of U. S. v. Dickerson, 413 F.2d 1111 (C.A. 7, 1969) and U. S. v. Lackey, 413 F.2d 655 (C.A. 7, 1969) and U. S. v. Lockyer, 448 F.2d 417 (C.A. 10, 1971). The 7th Circuit has determined that the Miranda Warning is applicable, whereas the 5th Circuit in U. S. v. Prudden, 424 F.2d 1021 (C.A. 5, 1970) has determined that the warning is not applicable and hence has refused to reverse the trial court's denial of petitioners' motion to suppress the evidence of the special agents' seizure.

The facts in the instant case show that the denial of petitioner's motion for suppression of evidence was based upon his residence in that he lived outside of the 7th or 4th judicial district rather than within said district. Such denial gives rise to the additional denial to petitioner of his presumable constitutional right of residency any-

where in the United States under equal protection of the law afforded them by the constitution of the United States.

7. In U. S. v. Heffner, 420 F.2d 809 (C.A. 4, 1970), case similar to appellants, the 4th Circuit held that appellant should have retroactive protection under the administrative ruling "IRS New Release No. 897, October 3, 1967", reprinted in 7 CCH 1967 Stand. Tax Rep., Section 6832, requiring a warning for protecting the constitutional rights of persons suspected of criminal tax fraud, during all phases of this investigation. Although petitioner's interrogations took place prior to this decision there is no inherent justification that such rule of law should not be applicable.

8. Under the statutory provisions of 28 U.S.C.A. Section 1654, petitioner Ray F. Wilson has a right to personally plead and conduct his case in any court, where filed, of the United States. This statutory provision coupled with Amendment 6 of the U. S. constitution which gives petitioner in a criminal case a right to personally confront witnesses against him should give a petitioner who acts in good faith an absolute right to self representation. Yet, in the instant case. petitioner was prevented from representing himself personally while at the same time the government was increasing the severity of the charges against the petitioner.

9. Petitioner Ray F. Wilson's case was remanded by the 5th Circuit based on the government's belated claim of invalidity of the judgment; yet, the government asserted the validity of the judgment for collection purposes. The simultaneous claim of validity and invalidity upon the same judgment by the government denies petitioners due process and amounts to cruel and unusual punishment in

violation of petitioners' Amendment 5 and 8 rights under the U. S. constitution.

When the government asserted the validity of petitioners' judgment for collection, such acts by waiver, ratification and estoppel should give rise to an implied warranty of validity of the judgment by the government. To hold otherwise would cast upon the government an unjustified favored position, such that, the government could do no wrong, notwithstanding its acts.

10. Upon remand of petitioner Ray F. Wilson's case to the district court for resentencing, the trial judge increased the severity of his punishment which gives rise to a case in conflict with the holdings in the cases of North Carolina v. Pearce, 395 U.S. 711 and U. S. v. Lopez, 428 F.2d 1135 (C.A. 2, 1970).

11. The government was allowed to withhold the identity of its informant without asserting a privilege or basis for such nondisclosure.

12. The orderly administration of Criminal Justice requires that this Court review by certiorari the sentencing process employed by the trial Court and disapproved by the Court of Appeals. In such situation a defendant is surely constitutionally prevented from having a timely review of the merits of his case. Appellant's right to a speedy trial is not a theoretical or abstract right but is one rooted in reality. Dickey v. Florida, 90 S.Ct. 1564. The government's prolonged delay in said trial continued until after the death of one of petitioners' star witnesses, Leon Brown.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERSON L. KING
Counsel for Petitioner

Date: _____

Certificate of Service

I hereby certify that service of the above and foregoing instrument has been made upon the United States of America by delivering same to:

United States Solicitor General's
Office
Department of Justice
Washington, D.C. 20530

_____

Roberson L. King
Counsel for Petitioner

APPENDIX

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-1998
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

RAY F. WILSON,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Texas

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(December 16, 1971)

ON PETITION FOR REHEARING

Before GEWIN, GOLDBERG and DYER, Circuit Judges.

PER CURIAM:

It IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-1998
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

RAY F. WILSON,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Texas

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(November 29, 1971)

Before GEWIN, GOLDBERG and DYER,
Circuit Judges.

PER CURIAM: AFFIRMED. *See United States v. Wilson*, 5 Cir. 1971, 440 F.2d 1103. *See* Local Rule 21.[1]

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* Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, 5 Cir. 1970, 431 F.2d 409, Part I.

1. See NLRB v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966.

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1971

No. 71-1998
Summary Calendar

D. C. Docket No. CR 69-H-122

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAY F. WILSON,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Texas

Before GEWIN, GOLDBERG and DYER,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

November 29, 1971

Issued As Mandate:

United States Court of Appeals

FOR THE FIFTH CIRCUIT

Edward W. Wadsworth
Clerk

Room 408, 400 Royal St.
New Orleans, La. 70130
Office of the Clerk

December 30, 1971

Mr. Roberson L. King
Attorney at Law
4720 Dowling St.
Houston, Texas

No. 71-1998—U.S.A vs. Ray F. Wilson

MANDATE STAYED TO: January 15, 1972

Dear Sir:

The court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with the clerk of this court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore will not be routinely prepared by this office (38LW3502).

Enclosed is a copy of the opinion, judgment and order denying rehearing which are still required by the Supreme Court to be incorporated as an appendix to your petition.

Very truly yours,

EDWARD W. WADSWORTH, Clerk
By CLAUDETTE STAIGER
Deputy Clerk

enc.
cc: Mr. Anthony J. P. Farris

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 30340
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

RAY F. WILSON and RUBY J. WILSON,
Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Texas

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(March 30, 1971.)

Before GEWIN, GOLDBERG and DYER,
Circuit Judges.

DYER, Circuit Judge: Ray F. Wilson and Ruby J. Wilson appeal following conviction and sentence for vio-

* Rule 18, 5 Cir. See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

lations of 26 U.S.C.A. §7201 and 7206(1).[1] They contend that the District Court erroneously denied their motion to suppress the evidentiary fruits of an allegedly illegal government seizure and interrogation. Moreover, they claim that because the Government failed to prove willfulness, the court erroneously denied their motions for new trial and for acquittal. We dismiss the appeal as to Ray F. Wilson and affirm the trial court's judgment as to Ruby J. Wilson.

After a jury found Ray F. Wilson guilty of six counts of income tax evasion and failure to report income, the District Judge orally imposed sentence from the bench. Subsequently he published a written judgment reiterating his oral pronouncement. On both occasions the judge sentenced Wilson on three counts but imposed no sentence "at this time" on the other three. The Government argues that the judge's action has made Ray Wilson's appeal premature: there has been no final judgment with regard to three counts for which Wilson has been found guilty.

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1. Section 7201 provides:

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Section 7206 provides in pertinent part:

> Any person who—
>
> (1) . . . Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter . . .
>
> shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution.

In criminal cases the sentence is the "final judgment" for which appeals may be taken. *Parr v. United States,* 1956, 351 U.S. 513, 518; *Berman v. United States,* 1937, 302 U.S. 211, 212; *Yeloushan v. United States,* 5 Cir. 1963, 313 F.2d 303, 304, *cert. denied,* 373 U.S. 912; *see Corey v. United States,* 1963, 375 U.S. 169, 172; *United States v. Hark,* 1944, 320 U.S. 531, 534. Only probation comporting with 18 U.S.C.A. §3651 obviates the necessity for imposition or execution of sentence to create a final decree in criminal proceedings. *See, e.g., Andrews v. United States,* 1963, 373 U.S. 334, 340. Cognizant of the problems of piecemeal litigation, the Supreme Court has often emphasized the prerequisite of finality for appeal. *See id.* at 340. Furthermore, when a multi-court indictment and verdict is involved, it is essential for post-conviction review that the record disclose the precise sentence for each count. *White v. United States,* 5 Cir. 1968, 396 F.2d 822, 826. This Court has strongly expressed its disapproval of general sentences in such instances. *E.g., Putt v. United States,* 5 Cir. 1968, 392 F.2d 64, 67, *cert. denied,* 393 U.S. 929; *Benson v. United States,* 5 Cir. 1964, 332 F.2d 288, 292; *see Stonecipher v. United States,* 5 Cir. 1969, 409 F.2d 745, 746.

In light of these authorities, it becomes clear that Ray Wilson has not received a final judgment entitling him to appellate review. *See Carroll v. United States,* 1957, 354 U.S. 394, 412; 28 U.S.C.A. §1291. By no stretch of the imagination can a sentence, or fine, imposed on three counts of a six-count conviction be equated with a sentence imposed on all six counts. Nor can the trial judge's decision to withhold sentence on three counts be categorized as probation. Finally, the specific language of the

District Court's judgment pretermits our consideration of the sentence as "general." Consequently, we dismiss Ray F. Wilson's appeal and remand this cause to the District Court for resentencing on all six counts. *See White v. United States, supra* at 825-26.

Ruby J. Wilson, however, has satisfied the requirements of 28 U.S.C.A. §1291, for the District Judge imposed specific fines on all six counts for which she was convicted. Having considered the record and the District Court's careful findings of fact and conclusions of law, we conclude that Mrs. Wilson's motion to suppress was properly denied. *United States v. Prudden*, 5 Cir. 1970, 424 F.2d 1021, *cert. denied*, 400 U.S. 831; *see United States v. Tonahill*, 5 Cir. 1970, 430 F.2d 1042, 1044-45; *Marcus v. United States*, 5 Cir. 1970, 422 F.2d 752, 756. Furthermore, examining the evidence in the light most favorable to the Government, the court committed no error in denying her motions for new trial and for acquittal on the ground that the Government had failed to prove willfulness. *See United States v. Jernigan*, 5 Cir. 1969, 411 F.2d 471, 473, *cert. denied*, 396 U.S. 927; *Graves v. United States*, 10 Cir. 1951, 191 F.2d 579, 582; *cf. Marcus v. United States, supra* at 755. *See also United States v. Kolsky*, 5 Cir. 1970, 423 F.2d 1111, 1113; *United States v. Robertson*, 5 Cir. 1969, 417 F.2d 873, 875-76; *Hale v. United States*, 5 Cir. 1969, 410 F.2d 147, 149, *cert. denied*, 396 U.S. 902.

The judgment as to Ruby J. Wilson is Affirmed. The appeal of Ray F. Wilson is Dismissed.

United States Court of Appeals

FOR THE FIFTH CIRCUIT

Edward W. Wadsworth
Clerk

Room 408, 400 Royal St.
New Orleans, La. 70130
(504) 527-6514

OFFICE OF THE CLERK

April 22, 1971

TO ALL PARTIES LISTED BELOW

Re: No. 30340—U.S.A. vs. Wilson and Wilson

Gentleman:

You are hereby advised that the Court has today entered an order denying the Petition ( ) for Rehearing in the above case. No opinion was rendered in connection therewith. See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDARD W. WADSWORTH,
Clerk

By FRANCES WOLFF
Deputy Clerk

cc: Mr. Roberson L. King
Mr. Ray F. Wilson
United States Attorney